

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14054 of 1994

WITH

SPECIAL CIVIL APPLICATION No 13972 of 1994,
4584/95, 3993/93, 9983/95

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

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2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

RAMESHBHAI C PATEL

Versus

DASHRATBHAI B SOLANKI

Appearance:

1. Special Civil Application No. 14054 of 1994
MR MUKESH R SHAH for Petitioner
MR YN RAVANI for Respondent No. 1

2. Special Civil Application No 13972 of 1994
MR MUKESH R SHAH for Petitioner
MR YN RAVANI for Respondent No. 1

3. Special Civil Application No.4585 of 94
MR DR DHIMOR for petitioner

MR YN RAVANI for Respondent No.1

4. Special Civil Application No.9983 of 1995

MR AR SHAIKH for petitioner

MR YN RAVANI for Respondent No.1

5. Special Civil Application No.3993 of 1993

MR RAJESH DAVE for Petitioner

MR DN PANDYA for Respondent No.1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 03/08/96

ORAL JUDGEMENT

1. The common question of law involved in these Special Civil Applications is:

"Whether the omission of sub-section (3) of section 166 by section 53 of Motor Vehicle (Amendment) Act, 1994, is retrospective having the effect of saving of claim petitions filed while sub-section (3) of section 166 was operative ?"

F A C T S :

Special Civil Application No.14054/94 and No.13972/94

2. In these two cases, the accident took place on 25.11.1989 and the claim petitions were filed before the Motor Accident Claim Tribunal on 02.05.1991. Thus, the claim petitions were delayed by a period of 1 year and 5 months. The petitioners also filed applications for condonation of delay which were separately registered. These condonation applications were rejected by the order of the Tribunal dated 21.09.1993 on the ground that in view of the provision of section 166(3) of the M.V.Act, 1988 (hereinafter referred to as "the Act of 1988), the Tribunal had no jurisdiction to condone the delay beyond the period of one year. The petitioner has challenged in these two Special Civil Applications the orders rejecting the applications for condonation of delay.

Special Civil Application No.4584/95 :

In this case, the accident took place on 10.01.1989 and the claim petition was filed before the Motor Accident Claims Tribunal on 29.04.1991 i.e. after nearly 2 years and 3 months. The petitioner filed an application for condonation of delay giving sufficient reasons for the delay, which was rejected by the order of the Tribunal dated 21.02.1995, on the ground that, in view of the provisions of section 166(3) of the M.V.Act, the Tribunal had no jurisdiction to condone the delay beyond the period of one year.

Special Civil Application No.3993/93 :

In this case, the accident alleged to have taken place on 04.11.1987 and the claim petition appears to have been filed on March 29, 1990. Admittedly beyond the period of 12 months. However, learned Tribunal following the decision of this Court reported in 1977 GLR 467, condoned the delay by the impugned order dated 05.02.1993. That in this Special Civil Application, the order condoning the delay dated 05.02.1993 has been challenged.

Special Civil Application No.9983/95 :

In this case, the accident alleged to have taken place on 15.12.1990 and the claim petition appears to have been filed on 16.03.1992. Admittedly beyond the period of 12 months. The petitioner has also moved an application for condonation of delay being Miscellaneous Civil Application No.170/92 along with the claim petition. However, learned Tribunal, by its order dated 20.08.1993, rejected the application for condonation of delay filed by the petitioner. Therefore, in this Special Civil Application, the order of rejecting the application for delay condonation dated 20.08.1993 has been challenged by the petitioner.

3. It is contended by Mr M.R.Shah, learned counsel appearing for the petitioner in Spl.C.A. No.13972/95 that the effect of amendment repealing sub-section (3) of section 166 of the Act is that, there is no limitation

for filing the claim petitions under section 166 of the M.V. Act, 1988. He further submits that the sub-clause (3) of section 166 has been omitted retrospectively. It is contended that the amendment being a beneficial legislation should be construed in a manner which achieves the object. He relies on the decision of the Apex Court reported in AIR 1995 SC 2268, wherein the Apex Court has held that the Court is required to give a liberal interpretation to a beneficial legislation. He also relies on a decision of this Court reported in 1977(18) GLR 467, wherein it is held that the jurisdiction of the Court should be exercised according to the justice, common sense and sound judgments and for advancing substantial justice. Mr. Shah contends that, on account of the amendment, a claimant can file a claim petition at any time. Even the present applicants can file afresh claim petitions, for which there is no limitation, then there should be no reason to refuse to decide the claim on merits. In support of this, he relies on the decision of the Rajasthan High Court reported in 1995 ACJ 739 in case of Radhabai vs. Sureshpal.

4. On the other hand, Mr Yogesh Ravani, learned counsel submits that there is no error apparent in the order of the Tribunal which calls for any interference by this Court in exercise of powers under Article 227 of the Constitution of India. He has pointed out that the amendment under section 166(3) of the Act has been brought after the decision of the Tribunal and therefore, that cannot have application to the present Special Civil Applications. He also submits that it is a settled law that a statute must always be interpreted prospectively unless the language of the statute makes them retrospective either expressly or by necessary implications. He referred to various decisions of the Apex Court as reported in AIR 1961 SC 1596, AIR 1984 SC 38, AIR 1965 SC 171, AIR 1960 SC 936, 1994(2) GLR 1091.

5. In order to appreciate the controversy, it will be appropriate to acquaint with the provisions pertaining to the limitation provided under the M.V. Act for filing the claim petitions. Sub-section (3) of section 110A of the M.V. Act, 1939 provided the limitation of six months from the date of the occurrence of the accident for filing the claim petitions for compensation. However, a discretion was given to the claim Tribunals for condonation of delay in filing the claim applications on showing sufficient cause for not making the application in time, thus, there was wide discretion with the Tribunal to condone the delay of whatever time by showing

the sufficient cause. The Act of 1939 was repealed and the M.V. Act, 1988 came into force w.e.f. 01.07.1989. The New Act prescribed a period of limitation in sub-section (3) of section 166 of the Act under the New Act. The limitation for filing the claim petitions within a period of six months was kept intact. However, the discretion of the Tribunal in the matter of condonation of delay was limited to the period of 12 months. The proviso of sub-section (3) of section 166 provided that the claim Tribunal may entertain the applications after the expiry of the said period of six months, but not later than 12 months, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time. But this new provision in the Act of 1988 was soon amended by section 53 of the M.V. (Amended) Act, 1994 by omitting the sub-clause (3) of section 166 which came in force from 14.12.1994. Undisputedly, the effect of the Amended Act is that there is no limitation for filing the claim petitions before the Tribunal. Thus, the only question is whether this amended Act has a retrospective effect or not. This controversy has been settled by the Apex Court by a recent decision in Dhannalal versus D.P. Vijayvargiya reported in 1996 AIR SCW 2617.

6. In Dhanalal's case (supra), accident took place on 4.12.1990 and the claim was filed on 7.12.1991 along with application for condonation of delay. The Tribunal condoned the delay by order dated 18.11.1993. The aggrieved party took the matter to the High Court. During the pendency of the matter before the High Court, the amendment under section 166(3) of the Act came into force. The High Court by its order dated 31.7.1995, set aside the order of the Tribunal. The Apex Court considering the Amendment of 1994 observed that the parliament rightly thought that prescribing a period of limitation and restricting the powers of the Tribunal to entertain any claim petition beyond the period of 12 months from the date of accident was harsh, inequitable and in many cases, was likely to cause injustice to the claimants. In this background, the Court held that when sub-section (3) of section 166 has been omitted, the Tribunal has to entertain a claim petition without taking the note of the date on which the accident took place. The Court further held that sub-section (3) of section 166 should be given full effect so that the objective of deletion of the said section by the parliament is not defeated. It was further held that the amendment will be extended to all claim applications filed beyond the period of 12 months from the date of accident, pending consideration either before the Tribunal, High Court or

the Apex Court.

7. In view of the aforesaid and the pronouncement of the Apex Court, the benefit of amendment of sub-section (3) of section 166 of the Act is applicable to all the claim petitions, out of which the present Special Civil Applications have arisen and as such, none of them can be thrown out on the ground of limitation.

8. In view of this, all the Special Civil Applications are allowed, except Special Civil Application No.3993/93 and the impugned order in the respective cases are quashed and set aside. The respective Tribunals are directed to register the claim applications and decide them expeditiously. So far as the Special Civil Application No.3993/93 is concerned, the order of the Tribunal condoning the delay does not call for any interference and as such, this Special Civil Application is rejected. Rule made absolute in all the Special Civil Applications, except Special Civil Application No.3993/93. Rule in Special Civil Application No.3993/93 is discharged. No order as to costs.

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